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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,015	09/28/2006	Yuji Ishino	P82427	5306
2352 7590 03/20/2009 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER MUKKAMALA, SANDEEP				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/20/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/570,015

**Applicant(s)**

ISHINO ET AL.

**Examiner**

SANDEEP MUKKAMALA

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-9 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/02)  
Paper No(s)/Mail Date 2/28/2006, 8/14/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

1. Applicant's election of 1-3 in the reply filed on 11/28/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 5-6 & 7-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/28/2008.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Regarding claim 2, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino (US 5861184) in view of Guarino (US 5863578) further in view of Hayes et al. (D 386081).

5. Regarding claim 1, Ishino discloses a packaged and frozen sushi product where in the package is degassed (hermetical seal) and frozen (Col.6 line 38). Ishino does not appear to explicitly disclose that an open topped plastic box is placed in the packing

bag. However, Hayes discloses an open topped tray (examiner notes in Figs. 1- 7) which can be placed in the packing bag of Ishino. Ishino and Hayes are analogous art because they are from the same field of endeavor, microwavable food.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Ishino and Hayes before him or her, to modify packaged frozen sushi package of Ishino to include the food tray of Hayes because of its ease of transporting and heating sushi product.

Ishino states that a plurality of pieces of sushi maybe packed by plastic films and frozen together [in a unified form] (Col. 4 line 15). The frozen sushi product is formed in such a manner that the entire frozen sushi mass is covered with the plurality of plastic film (Col. 5 line 50).

Ishino does not appear to explicitly disclose that a space is formed in the packing bag around the sushi product and this space having a volume of 0.2 to 0.6 times that of said sushi product. However, Guarino discloses a device for freezing & thawing seafood in a package [Abstract] where space is formed around the sushi product in a package [examiner notes space around sushi product in Fig.2]. Ishino and Guarino are analogous art because they are from the same field of endeavor, freezing & thawing sushi/seafood product. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Ishino and Guarino before him or her, to modify packaged frozen sushi package of Ishino to include the microwaveable vacuum

package of Guarino because the packaging of seafood is a cost efficient wherein the package itself becomes a stem container for microwaving (Col. 2 line 37).

Guarino does not explicitly disclose that the space around the sushi product has a volume of 0.2 to 0.6 times that of the product. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the volume around the sushi product for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

6. Regarding claim 2, Ishino, Guarino and Hayes as discussed above. Hayes discloses a food tray product wherein the box is tray or dish container having a rectangular shape when viewed in plain (Examiner notes in Fig. 1 - 7).

7. Regarding claim 3, Ishino, Guarino and Hayes discloses as discussed above. Guarino further discloses a bag comprised of polypropylene and nylon (Col. 4 line 47). Ishino and Guarino are analogous art because they are from the same field of endeavor, freezing & thawing sushi/seafood product. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Ishino and Guarino before him or her, to modify the overlapping two laminate films of Ishino to include the polypropylene and nylon of Guarino because propylene enables it to tolerate temperature extremes and the nylon contributes to its strength (Col. 4 line 48).

Ishino also discloses that it is preferable that the outer covering plastic film is formed thicker than the inner covering plastic film (Col.4 line 7). Ishino discloses that the polyethylene film is at the inner side and the nylon is at the outer side (Col. 5 line 1). Ishino (5861184) discloses the claimed invention except that polypropylene film has the thicker layer and nylon the thinner layer. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have the thermoplastic polymer thicker layer and nylon the thinner layer in order to produce film with desired temperature tolerance and strength and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability For the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANDEEP MUKKAMALA whose telephone number is (571)270-7043. The examiner can normally be reached on Mon - Thurs 8:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571)272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SANDEEP MUKKAMALA/  
Examiner, Art Unit 1794

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794